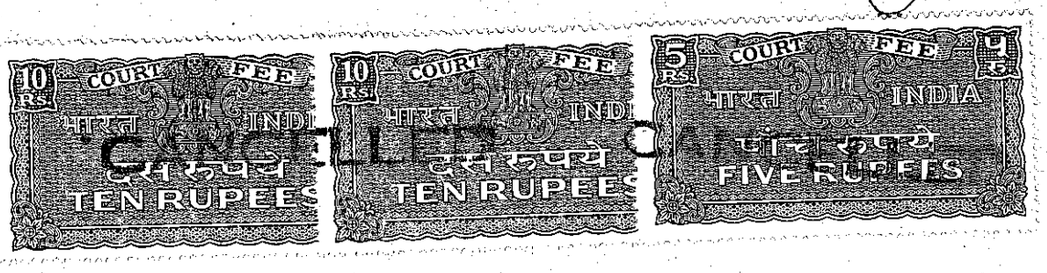
(3)



IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

WRIT PETITION NO. 4536 /1996

PETITIONER : Nagar Panchayat Ratanpur, through its Chief Executive Officer, Tahsil Kota, District Bilaspur (M.P.)

-: VERSUS :-

RESPONDENTS: 1. Presiding Officer under the Industrial Disputes Act, Labour Court, Bilaspur (M.P.)

2. Brijesh Shrivastava, son of Ram Sharan Shrivastava, resident of Baniyapara, Ratanpur, Tahsil Kota, District Bilaspur (M.P.)

Smt. Kamla Verma
K. Verma

PETITION UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 4530 of 1996

Petitioner : Nagar Panchayat, Ratanpur

Versus

Respondents : Presiding Officer, Labour Court & another

Writ Petition No. 4554 of 1996

Petitioner : Nagar Panchayat, Ratanpur

Versus

Respondents : Presiding Officer, Labour Court & another

Writ Petition No. 4611 of 1996

Petitioner : Nagar Panchayat, Ratanpur

Versus

Respondents : Presiding Officer, Labour Court & another

Writ Petition No. 4612 of 1996

Petitioner : Nagar Panchayat, Ratanpur

Versus

Respondents : Presiding Officer, Labour Court & another

Writ Petition No. 1524 of 1997

Petitioner : Nagar Panchayat, Ratanpur

Versus

Respondents : Shri Ashok Jadhav & another

Post for order on 11th July, 2006.

Sd/-
SATISH K. AGNIHOTRI
Judge

(48)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 4530 of 1996

Petitioner : Nagar Panchayat, Ratanpur

Versus

Respondents : Presiding Officer, Labour Court & another

Writ Petition No. 4554 of 1996

Petitioner : Nagar Panchayat, Ratanpur

Versus

Respondents : Presiding Officer, Labour Court & another

Writ Petition No. 4611 of 1996

Petitioner : Nagar Panchayat, Ratanpur

Versus

Respondents : Presiding Officer, Labour Court & another

Writ Petition No. 4612 of 1996

Petitioner : Nagar Panchayat, Ratanpur

Versus

Respondents : Presiding Officer, Labour Court & another

Writ Petition No. 1524 of 1997

Petitioner : Nagar Panchayat, Ratanpur

Versus

Respondents : Shri Ashok Jadhav & another

Single Bench: Hon'ble Mr. Justice **Satish K. Agnihotri.**

Shri Manoj Paranjpe, Advocate for the Petitioner.

Shri Ajay Shrivastava, Advocate for the Respondents/employees in four petitions and Shri P. S. Koshy, Advocate for the Respondent/employee in W.P.No. 4611/1996.

ORDER

(11th July, 2006)

The following order of the Court is passed by **Satish K. Agnihotri, J.**

1. The present writ petitions being W.P.No.s 4530/1996, 4554/1996, 4611/1996, 4612/1996, and 1524/1997 involve common question of law as to whether the impugned awards dated 30.8.1996 passed in

Case No.s 16/I.D.A./96 (Reference), 17/I.D.A./96 (Reference), 15/I.D.A./96 (Reference), 14/I.D.A./96 (Reference), and award dated 6.11.1996 passed in Case No. 10/I.D.A./96 (Reference), respectively, by the Labour Court suffer from patent illegalities.

2. The factual matrix of the writ petitions are as under:

Writ Petition No. 4530/1996 :

(i) The respondent/worker was appointed on the post of Moharrir vide order dated 15.12.1992 (Annexure A/1) passed by the Chairman, Special Area Development Authority, Ratanpur (hereinafter referred to as 'SADA'), for a period of one year on probation on daily wages. By order dated 30.8.1994 (Annexure A/2) passed by the Chairman, SADA, the appointment of the respondent/employee was cancelled on the ground that the respondent/employee was not appointed as per the provisions of Rule 4 of the Madhya Pradesh Special Area Development Authority (Chairman and Officers and Servants Recruitment and Conditions of Service) Rules, 1976 (hereinafter referred to as 'the Rules, 1976') The respondent/employee was paid one month's salary in lieu of notice and 30 days pay on average pay calculation, as retrenchment compensation.

(ii) Being aggrieved the respondent/employee filed a writ petition in the High Court of Madhya Pradesh being W.P.No. 3340/1994. The High Court of Judicature at Jabalpur vide order dated 26.4.1995 (Annexure A/4) directed the respondent/employee to raise the industrial dispute before the appropriate forum. Accordingly the statement of claim was filed on 7.4.1996 (Annexure A/5).

(iii) The Labour Court by award dated 30.8.1996 (Annexure A/7) passed in case No. 16/I.D.A./96(Reference) held that the employer had not complied with the provisions of Section 25-F of the

Industrial Disputes Act, 1947 (hereafter referred to as 'the Act, 1947') and as such the respondent/employee was held to be entitled to reinstatement with full back wages.

Writ Petition No. 4554/1996

(i) The respondent/worker was appointed on the post of Moharrir vide order dated 15.9.1992 passed by the Chairman, SADA, for a period of 89 days on daily wages. By order dated 30.8.1994 (Annexure P/1) passed by the Chairman, SADA, the appointment of the respondent/employee was cancelled on the ground that the respondent/employee was not appointed as per the provisions of Rule 4 of the Rules, 1976. The respondent/employee was paid one month's salary in lieu of notice and 30 days pay on average pay calculation, as retrenchment compensation.

(ii) Being aggrieved the respondent/employee filed a writ petition in the High Court of Madhya Pradesh being W.P.No. 3323/1994. The High Court of Judicature at Jabalpur vide order dated 26.4.1995 (Annexure A/3) directed the respondent/employee to raise the industrial dispute before the appropriate forum. Accordingly the statement of claim was filed on 7.4.1996 (Annexure P/4).

(iii) The Labour Court by award dated 30.8.1996 (Annexure P/6) passed in case No. 17/I.D.A./96(Reference) held that the employer had not complied with the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereafter referred to as 'the Act, 1947') and as such the respondent/employee was held to be entitled to reinstatement with full back wages.

Writ Petition No. 4611/1996

(i) The respondent/worker was appointed on the post of Draftsman vide order dated 20.8.1992 passed by the Chairman, SADA, on temporary basis until further orders. By order dated 30.8.1994

(Annexure P/2) passed by the Chairman, SADA, the appointment of the respondent/employee was cancelled on the ground that the respondent/employee was not appointed as per the provisions of Rule 4 of the Rules, 1976. The respondent/employee was paid one month's salary in lieu of notice and 30 days pay on average pay calculation, as retrenchment compensation.

(ii) Being aggrieved the respondent/employee filed a writ petition in the High Court of Madhya Pradesh being W.P.No. 3339/1994. The High Court of Judicature at Jabalpur vide order dated 26.4.1995 (Annexure P/4) directed the respondent/employee to raise the industrial dispute before the appropriate forum. Accordingly the statement of claim was filed on 7.4.1996 (Annexure P/5).

(iii) The Labour Court by award dated 30.8.1996 (Annexure P/7) passed in case No. 15/I.D.A./96(Reference) has that the employer had not complied with the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereafter referred to as 'the Act, 1947') and as such the respondent/employee was held to be entitled to reinstatement with full back wages.

Writ Petition No. 4612/1996

(i) The respondent/worker was appointed on the post of Timekeeper vide order dated 21.4.1992 passed by the Chairman, SADA, for 89 days on daily wages fixed by the Collector. By order dated 30.8.1994 (Annexure P/2) passed by the Chairman, SADA, the appointment of the respondent/employee was cancelled on the ground that the respondent/employee was not appointed as per the provisions of Rule 4 of the Rules, 1976. The respondent/employee was paid one month's salary in lieu of notice and 30 days pay on average pay calculation, as retrenchment compensation.

(ii) Being aggrieved the respondent/employee filed a writ petition in the High Court of Madhya Pradesh being W.P.No. 3341/1994. The High Court of Judicature at Jabalpur vide order dated 26.4.1995 (Annexure P/4) directed the respondent/employee to raise the industrial dispute before the appropriate forum. Accordingly the statement of claim was filed on 7.4.1996 (Annexure P/5).

(iii) The Labour Court by award dated 30.8.1996 (Annexure P/7) passed in case No. 14/I.D.A./96(Reference) held that the employer had not complied with the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereafter referred to as 'the Act, 1947') and as such the respondent/employee was held to be entitled to reinstatement with full back wages.

Writ Petition No. 1524/1997

(i) The respondent/worker had filed Statement of Claim (Annexure P/1) on 16.8.1995 stating therein that he was appointed on the post of Timekeeper in the month of May, 1992. His attendance was being recorded in the attendance register as per the order dated 12.10.1992 and he was disengaged by oral order dated 30.8.1994.

(ii) Being aggrieved the respondent/employee raised the dispute before the appropriate Government which vide order dated 5.8.1995 referred the dispute to the Labour Court for adjudication.

(iii) The Labour Court by award dated 6.11.1996 (Annexure P/5) passed in case No. 10/I.D.A./96(Reference) held that the employer had not complied with the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereafter referred to as 'the Act, 1947') and as such the respondent/employee was held to be entitled to reinstatement with full back wages.

53

3. Since the question of law involved in the above stated writ petitions is common, all the writ petitions are being disposed of by this common order.

4. Shri Manoj Paranjpe, learned counsel appearing for the petitioners in all the above five writ petitions, submitted that the respondents/employees were appointed without following the proper procedure of law. The service conditions of the respondents/workers were governed by the statutory Rules 1976 which clearly provides for method of recruitment. The recruitment to a post or class of posts could be done through either by direct recruitment or by promotion of a person employed in the authority or by transfer or deputation of a person serving in connection with the affairs of any local authority or of the State Government with the previous approval of the State Government. It was submitted that the respondents/workers were not appointed in accordance with the provisions of law by the then Chairman, SADA, on daily wages, in one case on monthly basis and not against regular vacancy but on temporary basis. After having come to know that all the appointments were irregular and illegal, the Chairman, SADA by order dated 30.8.1994 in writ petition No.s 4530/1996, 4554/1996, 4611/1996, 4612/1996, and by oral order dated 30.8.1995 in W.P.No. 1524/1997, removed the respondents/workers from service after having paid one month's pay in lieu of notice and 30 days pay after calculation the average pay, as retrenchment compensation.

5. Learned counsel for the petitioner further submitted that the appointment of the respondents/workers being illegal, they were rightly removed from service by the Chairman, SADA. There was no illegality or irregularity in terminating the services of the respondents/employees. Learned counsel assails the award on the

ground that the Labour Court had completely ignored the provisions of law, firstly, the service conditions of the respondents/employees were governed by the statutory Rules 1976, and as such the Labour Court had no jurisdiction to entertain the petition. Secondly, before holding that the removal of the respondents/employees from service amounts to retrenchment and the petitioners had not complied with the provisions of Rule 25-F of the Act, 1947 in its letter and spirit before retrenching the respondents/employees from industry, the Labour Court ought to have adjudicated and recorded clear findings that the respondents/employees were workmen and they had been in continuous service for not less than one year under the employer. The Labour Court has failed to establish that the employee was in continuous service for not less than one year under the employer. The requirement is working 240 days in the preceding 12 months period, which was neither adjudicated nor finding was recorded.

6. It was further contended that the award passed by the Labour Court is bad in law and the Labour Court had committed patent illegality in declaring that the provisions of Section 25-F of the Industrial Disputes Act have not been complied with. Thirdly, learned counsel relying on the dictum of the Supreme Court in the case of **Secretary, State of Karnataka and others Vs. Umadevi (3) and others** {(2006) 4 SCC 1} submitted that the appointments of the respondents/employees were not in accordance with the constitutional scheme, as the invitation was not made to the public at large. The provisions of Rule 4 of the statutory Rules 1976 were not also followed in the case. The Labour Court had not considered all these facts while passing the impugned award and directing the petitioner to reinstate the respondents/employees with full back wages.

7. On the question of jurisdiction under Article 227 of the Constitution of India, learned counsel relied upon a decision of the Supreme Court in the case of **Surya Dev Rai Vs. Ram Chander Rai and others** { (2003) 6 SCC 675}.

8. On the contrary, Shri P. S. Koshy, learned counsel appearing for the respondent/employee in W.P.No. 4611/1996 and Shri Ajay Shrivastava, learned counsel appearing for the respondents/employees in other four petitions, have submitted that it was true that the service conditions of the respondents/employees were governed by the statutory Rules 1976 but the respondents/employees were at liberty to move the Industrial Court for relief in the event the provisions of the Act, 1947 were not followed in its letter and spirit. Further the High Court of judicature at Jabalpur vide order dated 26.4.1995 directed the respondents/employees to raise the dispute before the Labour Court. According to learned counsel for the respondents/employees, it was not necessary to establish and record finding with regard to the working of the employees for 240 days in the preceding 12 months when on the face of it the provisions of Section 25-F of the Act, 1976 were not followed.

9. The main objection of learned counsel for the respondents/employees was that the employer had not served notice in the prescribed manner on the appropriate Government before retrenching the respondents/employees from service. Learned counsel for the respondents/employees further emphatically contended that this Court has limited jurisdiction under Article 226/227 of the Constitution of India and there was no patent error in the impugned order. This Court should not interfere with the award passed by the Labour Court.

10. Having heard learned counsel for the parties and having perused the records appended to the petition and return, it is evident that the respondents/employees were not appointed under the provisions of Rule 4 of the Rules 1976 which clearly provides method of recruitment. Rule 4, 5 and 6 of the Rules, 1976 are quoted herein below :-

"4. **Methods of Recruitment**. Recruitment to the Authority service or a post or class of posts may be made by one or more of the following methods:-

(a) by direct recruitment;

(b) by promotion of a person employed in the Authority;

(c) by transfer or deputation of a person serving in connection with the affairs of any local authority or of the State Government with the previous approval of the State Government.

5. **Direct Recruitment**. – The number of candidates to be recruited at any time shall be determined by the Authority. Save when such vacancies relate to posts in the lowest cadre of the Authority service which provide entry in Authority service by direct recruitment alone, all the vacancies determined to be filed in at any time shall as far as may be, filled in by direct recruitment and by promotion of employees already in the service of the authority in the promotion of 50:50.

6. (1) Whenever the Authority has to fill up any post of Class III or Class IV the names of the candidates shall be requisitioned from the local employment exchange and in the case of Class I and Class II posts it shall be notified in one Hindi and one other News Paper.

(2) The Appointing Authority shall be competent to consider the applications directly received in the office of the Authority for such vacant posts.

(3) The list of approved candidates shall be prepared in order of merit for such posts, as appointing authority may consider necessary and as far as possible vacancies shall be filed from

amongst such approved candidates in the order in which names stand on the list."

11. In the present case, it is admitted position that under Rule 6(1), the post of Class-III or Class-IV has to be filed up by requisitioning the names of the candidates from local employment exchange and a list of approved candidates has to be prepared. The applications received directly in the office of the authority shall also be considered for direct recruitment. In the instant case on perusal of the papers it is clear that neither has been done. Names were not requisitioned from the employment exchange, no invitation was made to the public at large for making advertisement of the post and it further appears that there was no selection by the competent authority. All the employees in the above stated four writ petitions were holding class IV posts on temporary basis and the employee in W.P.No. 4611/1996 was holding class III post on temporary basis. Hence, it is held that the appointment of the respondents/employees was irregular, illegal and unconstitutional.

12. The Supreme Court in the case of **Secretary, State of Karnataka and others Vs. Umadevi** (3) and others { 2006) 4 SCC 1} held in para 43, as under:-

"43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the

58

end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as "litigious employment" in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates."

13. With regard to the question as to whether the Labour Court has jurisdiction to entertain the present case when the service conditions of the respondents/employees are governed by the statutory Rules, 1976, need not be discussed and decided in the present case in view

of the fact that the High Court of Judicature at Jabalpur in writ petitions filed by the respondents/employees had directed the respondents/employees to raise dispute before the appropriate Government for reference to the Labour Court.

14. With regard to the objection of the respondents about the limitation of this Court while holding that the petitions are filed under Article 226/227 of the Constitution of India, it is well settled principle of law that this Court has jurisdiction of judicial review of the awards passed by the Labour Court in the event there is manifest and apparent error on the face of the proceedings based on the clear ignorance or utter disregard to the provisions of law or there is grave failure of justice or grave injustice has occasioned thereby. The Supreme Court in the case of **Surya Dev Rai Vs. Ram Chander Rai and others** { (2003) 6 SCC 675} held as under:-

> **"38.** .....
>
> (3) Certiorari, under Article 227 of the Constitution, is issued for correcting gross errors of jurisdiction i.e. when a subordinate court is found to have acted (i) without jurisdiction – by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction – by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.
>
> (4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or grave failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident i.e. which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view, the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the above said two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of

jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case."

"39. Though we have tried to lay down broad principles and working rules, the fact remains that the parameters for exercise of jurisdiction under Articles 226 or 227 of the Constitution cannot be tied down in a strait-jacket formula or rigid rules. Not less than often, the High Court would be faced with a dilemma. If it intervenes in pending proceedings there is bound to be delay in termination of proceedings. If it does not intervene, the error of the moment may earn immunity from correction. The facts and circumstances of a given case may make it more appropriate for the High Court to exercise self-restraint and not to intervene because the error of jurisdiction though committed is yet capable of being taken care of and corrected at a later stage and the wrong done, if any, would be set right and rights and equities adjusted in appeal or revision preferred at the conclusion of the proceedings. But there may be cases where "a stitch in time would save nine". At the end, we may sum up by saying that the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the judge."

15. The ratio laid down by the Supreme Court in the case of **Surya Dev Rai** (supra) was followed in the case of **Ranjeet Singh Vs. Ravi Prakash** {(2004) 3 SCC 682} and other cases later on.

62

16. The Supreme Court in the case of **Management of Madurantakam Coop. Sugar Mills Ltd. Vs. S. Viswanathan** { (2005) 3 SCC 193) held in para 12, as under:-

> "12. Normally, the Labour Court or the Industrial Tribunal, as the case may be, is the final Court of facts in these types of disputes, but if a finding of fact is perverse or if the same is not based on legal evidence, the High Court exercising a power either under Article 226 or under Article 227 of the Constitution can go into the question of fact decided by the Labour Court or the Tribunal. But before going into such an exercise it is necessary that the writ Court must record reasons why it intends reconsidering a finding of the fact. In the absence of any such defect in the order of the Labour Court the writ Court will not enter into the realm of factual disputes and finding given thereon....."

17. In the present case the Labour Court has completely ignored the fact of nature of appointment and the procedure to pass the award without adjudicating and recording the finding that the respondents/employees were workmen and have worked for 240 days in the preceding 12 months which is a pre condition before holding that the provisions of Section 25-F have not been complied with.

18. The Supreme Court in the case of **Chief Engineer (Construction) v. Keshava Rao(Dead) by Lrs.** *{ (2005) 11 SCC 229}* observed in para 13, as under :

> **"13.** The learned Judge further held that since the petitioner had been appointed as casual labourer on 16-7-1975 and had continuously worked till the end of 1977 it followed that the petitioner had put in continuous service as contemplated by Section 25-B of the Industrial Disputes Act. Since there was non-compliance with the provisions of Section 25-F of the Industrial Disputes Act, the termination of his service was not legally sustainable. Such a contention was not raised before the Labour Court, but the learned Judge recorded the aforesaid finding in his judgment. In doing so the learned Judge has completely lost sight of the fact that the initial burden of establishing the factum of

continuous work for 240 days in a year rested with the respondent. Unless the said initial burden was discharged, and the appellant failed to produce evidence in rebuttal, such a finding could not have been recorded by the learned Judge."

19. The Supreme Court in the case of **Range Forest Officer Vs. S.T. Hadimani** { (2002) 3 SCC 25 } held in paragraphs 2 and 3, as under :

"2. In the instant case, dispute was referred to the Labour Court that the respondent had worked for 240 days and his service had been terminated without paying him any retrenchment compensation. The appellant herein did not accept this and contended that the respondent had not worked for 240 days. The Tribunal vide its award dated 10-8-1998 came to the conclusion that the service had been terminated without giving retrenchment compensation. In arriving at the conclusion that the respondent had worked for 240 days, the Tribunal stated that the burden was on the management to show that there was justification in termination of the service and that the affidavit of the workman was sufficient to prove that he had worked for 240 days in a year.

3. For the view we are taking, it is not necessary to go into the question as to whether the appellant is an 'industry' or not, though reliance is placed on the decision of this Court in *State of Gujarat* v. *Pratamsingh Narsinh Parmar*[4]. In our opinion the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside. However, Mr Hegde, appearing for the Department states that the State is really interested in getting the

law settled and the respondent will be given an employment on compassionate grounds on the same terms as he was allegedly engaged prior to his termination, within two months from today."

Which was later on followed by the Supreme Court in the case of **Batala Coop. Sugar Mills Ltd. v. Sowaran Singh** { **(2005) 8 SCC 481**}

20. In the present case the respondents/employees have neither pleaded that they have worked for 240 days nor adduced any evidence in support of their pleadings. The Laobur Court hurriedly, without following the pre condition of holding retrenchment as bad, proceeded to declare the termination order as bad for non-compliance of the provisions of Section 25-F of the Act, 1947.

21. The respondents/employees were removed from service on account of the irregular appointment by not following the statutory provisions as well as the constitutional requirements. Even then, admittedly, the respondents/employees were paid one month's salary in lieu of notice and average pay as per Section 25-F (b) of the Act, 1947. It is not clear whether the provisions of Section 25-F (c), requirement of notice in the prescribed manner to the appropriate Government, was done or not. Even if the provisions of Section 25-F (c) is not complied with, that may not defeat the purpose of Section 25-F, as in the present case admittedly, the respondents/employees were temporary employees, not appointed against regular vacancies and their appointment was not in accordance with law.

22. The Supreme Court in the case of **Kishore Kumar Khaitan and another Vs. Praveen Kumar Singh** { (2006) 3 SCC 312} has held in para 13, as under:-

"13. The jurisdiction under Article 227 of the Constitution may be restrictive in the sense that it is to be invoked only to correct errors of jurisdiction. But when a court asks itself a wrong question or

(65)

approaches the question in an improper manner, even if it comes to a finding of fact, the said finding of fact cannot be said to be one rendered with jurisdiction and it will still be amenable to correction at the hands of the High Court under Article 227 of the Constitution. The failure to render the necessary findings to support its order would also be a jurisdictional error liable to correction....."

23. For the reasons discussed hereinabove and the dicta laid down by the Supreme Court in various cases cited above, the Labour Court has committed patent illegality in passing the award, ignoring the law and facts. Hence these petitions are allowed and the award dated 30.8.1996 passed in Case No.s 16/I.D.A./96 (Reference), 17/ I.D.A./ 96 (Reference), 15/I.D.A./96 (Reference), 14/I.D.A./96 (Reference), and award dated 6.11.1996 passed in Case No. 10/ I.D.A./ 96 (Reference), are set aside. No order as to costs.

Sd/-
SATISH K. AGNIHOTRI
Judge

Thakur